U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11244099

Date: AUG. 18, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a postdoctoral fellow in chemical engineering, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Petitioner proposes "to expand [his] research to design fuel [redacted] for [redacted] combustion by understanding the breakdown mechanisms and [redacted] property relationships" and "to design a fuel [redacted] able to expand the operational speed and load in [redacted] engines to fully take advantage of their environmentally-friendly features."

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. The Director concluded that the Petitioner's proposed endeavor met the substantial merit and national importance requirements.

The second prong shifts the focus from the proposed endeavor to the petitioner in order to determine whether he or she is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at 890. The record includes documentation of his curriculum vitae, academic credentials, published articles, and funding sources. He also offered evidence of articles that cited to his published work, information on journals that published his work, and letters of support discussing his graduate and postdoctoral research. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's graduate research projects at [redacted] University and [redacted] University.[4] For example, in discussing the Petitioner's research using [redacted] to transform samples into bio-crude oil, [redacted] stated that the Petitioner "determined that bio-crude oils obtained through [redacted] have a calorific value of 36-38 MJ/kg, which is close to petroleum" and "discovered that [redacted] successfully removed dissolved solids as well as [redacted] ions dissolved solids from brine." Although he opined that "[t]his examination of [redacted] brine provided energy researchers with a new source for [redacted] concentrate management and [redacted] production while simultaneously lowering emissions of [redacted] through photosynthesis," [redacted] did not provide specific examples indicating that the Petitioner's work has been utilized in chemical engineering or otherwise constitutes a record of success in the field beyond "inclu[sion] in several review articles," discussed later.

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.
[4] While we discuss a sampling of these letters, we have reviewed and considered each one.

Likewise, [redacted] commented that the Petitioner's research "is a unique feat of chemical engineering, and it has certainly drawn my interest," and he has "referred to [the Petitioner's] findings on [redacted] to further contextualize my findings and to validate their accuracy." While [redacted] indicated that the Petitioner's "work has helped me complete an exhaustive analysis o[redacted] [redacted] that is relevant to the design and execution of future research projects in the field," he does not offer examples of how the Petitioner's research and other findings have been implemented, utilized, or applauded in the field beyond being cited by others in their published works.

Additionally, [redacted] stated that the Petitioner's "study on [redacted] in spark ignition engine fuel was divided into two parts, the first concerning automation of the process of finding new [redacted] to be used as fuels and the second examining [redacted] and the factors necessary for [redacted] to have [redacted] pressures comparable with gasoline," and he "proposed that the best [redacted] for spark ignition engine fuel had [redacted] volumes of no more than 40%, as these provide the optimal conditions of volatility, water tolerance, and kinematic viscosity to safely power spark ignition engines." While she summarized the research and indicated the Petitioner's proposal, [redacted] did not explain how this work has affected the industry or otherwise represents a record of success or progress rendering the Petitioner well positioned to advance his proposed endeavor.

The record also includes examples of various partial articles which cited to the Petitioner's co-authored paper, entitled '[redacted]' (*Environmental Progress & Sustainable Energy*).[5] For instance, in the article, entitled '[redacted]' (*Applied Energy*), the authors identified the Petitioner's research on [redacted] extraction of biocrude oil by comparing biocrude oil yield and lipid content. This article, however, does not distinguish or highlight the Petitioner's work from the 81 other papers referenced in the article. Similarly, in the article entitled, '[redacted]' (*PLOS ONE*), the authors indicated the Petitioner's study of [redacted] under [redacted] conditions with [redacted] deprivation. This article, however, does not differentiate the Petitioner's paper from the 116 other papers referenced in the article.

Regarding the Petitioner's overall citation record, as indicated above, several of his reference papers commented on his citation numbers. For example, "[the Petitioner] has received, according to Google Scholar, 35 citations, which manifests the importance of his research in the scientific community" [redacted], "[the Petitioner's] impressive citation statistics do not come as a surprise given his much-appreciated publications" and "[h]e has accumulated over thirty references from his peers" [redacted], and "[the Petitioner's] articles detailing these studies have been recognized by his peers and cited in other published papers over 35 times at present" and "[e]ach of these citations is an indication of the observed influence [the Petitioner] has had upon his peers" [redacted]. As it relates to the citation of the Petitioner's work, the record includes information from Google Scholar indicating that his highest cited article published in *Environmental Progress & Sustainable Energy* garnered 31 citations with his remaining five articles receiving two or less,

[5] Although we discuss representative sample articles here, we have reviewed and considered each one.

respectively. The Petitioner does not specify how many citations for each of these individual articles were self-citations by him or his coauthors.[6]

Furthermore, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for the engineering research field. The Petitioner claims that his *Environmental Progress & Sustainable Energy* paper ranked among "the top 10% most-cited articles published in Engineering in 2013" based on the number of citations it has received (31) since that time. The Petitioner did not indicate whether he factored in any self-citations in determining these percentile rankings. In addition, the Clarivate Analytics citation data is from February 11, 2019, and therefore does not capture citations that occurred after early 2019, while the Petitioner's Google Scholar citation report is dated May 6, 2019.[7] Because the Clarivate Analytics data is not contemporaneous with the Petitioner's Google Scholar data, he has not shown that the former provides a proper analysis of his citation record. Moreover, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

Additionally, the Petitioner presented an article in *Scientometrics* written by Lutz Bornmann and Werner Marx, entitled "How to evaluate individual researchers working in the natural and life sciences meaningfully? A proposal of methods based on percentiles of citations." This article presents recommendations for "how to evaluate individual researchers in the natural and life sciences" for purposes of funding and promotion or hiring decisions. The authors state that "publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicator" should be given "the highest weight when comparing the scientific performance of single researchers." While the authors offer proposed methods for bibliometric analysis of research performance, the record does not indicate that their methods have been accepted and implemented by the academic community. Moreover, with regard to citation information from Google Scholar, the authors advise against "using Google Scholar (GS) as a basis for bibliometric analysis. Several studies have pointed out that GS has numerous deficiencies for research evaluation."

In response to the Director's request for evidence, the Petitioner presented a line chart (2013-2019) that he claims were derived from "Microsoft Academic." While he contends that this chart compares his citation and publication counts to those of other researchers in the field, the Petitioner did not indicate whether he factored in any self-citations in compiling his percentile rankings from Microsoft Academic. Moreover, the date of collection of the percentile rankings post-dates the filing of the petition, and therefore the Petitioner has not shown that the citation and publication counts used in the Microsoft Academic percentile calculation occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner has not demonstrated that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

[6] The Petitioner only provided partial copies of his articles without the reference pages.
[7] A webpage accompanying the Clarivate Analytics information states that its citation "data is updated six times a year" (every two months).

The record also includes information about *Fuel* and *Destination and Water Treatment* in which the Petitioner has published his work. That a publication bears a high journal ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in the field.

Further, as it relates to the Petitioner's education, while his doctoral degree from [redacted] University renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

The Petitioner also submitted "Acknowledgements" sections of his published articles noting that the work was supported by various entities, such as U.S. Department of Energy, U.S. National Science Foundation, and the Bureau of Reclamation.[8] In addition, several of the reference letters claimed that the Petitioner's research "resulted in the reception of considerable grants from federal organizations" [redacted], and "[the Petitioner's] work . . . was supported by numerous agencies within the U.S. government" [redacted]. The record, however, does not include copies of the research grants. In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than [redacted]) was mainly responsible for obtaining funding for the research projects.

The record demonstrates that the Petitioner has conducted and published research while at [redacted] State University and [redacted] University, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published work has served as an impetus for progress in the or that it has generated substantial positive discourse in the industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to chemical engineering.

[8] On appeal, the Petitioner provides another letter from [redacted] and a letter from the U.S. Department of Energy, post-dating the Director's decision. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. Accordingly, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.